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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Twenty-eighth session

SUMMARY RECORD (PARTIAL)* OF THE 577th MEETING

Held at the Vienna International Centre, Vienna,
on Tuesday, 23 May 1995, at 9.30 a.m.

Chairman: Mr. GOH (Singapore)

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International commercial arbitration: draft Notes on Organizing Arbitral Proceedings (*continued*)

Section 2 (*continued*)

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

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The meeting was called to order at 9.50 a.m.

INTERNATIONAL COMMERCIAL ARBITRATION: DRAFT NOTES ON ORGANIZING ARBITRAL MEETINGS *(continued)* (A/CN.9/410)

Section 2 (*continued*)

1. **The CHAIRMAN** asked whether a compromise solution had been found to the drafting of Section 2 (paragraph 15) of the draft Notes (A/CN.9/410).

2. **Mr. HOLTZMANN** (United States of America) submitted a joint proposal on behalf of the delegations of Australia, the Russian Federation and the United States of America to reword paragraph 15 as follows:

> "15. Sometimes parties who have not included in their arbitration agreement a stipulation that a set of arbitration rules will govern the arbitral proceedings might wish to do so after the arbitration has begun. If that occurs, the UNCITRAL Arbitration Rules may be used without modification. In the alternative, the parties may wish to adopt the rules of an arbitration institution. In that case, it would be necessary to secure the agreement of that institution and to stipulate the terms under which the arbitration could be carried out in accordance with the institution's rules. However, caution is advised, as consideration of a set of arbitration rules might delay the proceedings, or give rise to unnecessary controversy."

The Secretariat might undertake any minor drafting changes needed.

3. **Mr. GRIFFITH** (Australia) said that in any commentary it should be noted that great care ought to be taken in adopting institutional rules.

4. **Ms. BRELIER** (France) considered that the proposed new wording was rather imprecise, very long and uncertain in its implications. Her delegation wished it to be made clear that the adoption of arbitration rules was not a prior condition for arbitration.

5. **The CHAIRMAN** said that the joint proposal did not change, but merely clarified and elaborated the meaning of the present paragraph 15.

6. **Mr. CHOUKRI SBAI** (Observer for Morocco) asked the United States representative to explain why the agreement of an arbitration institution was necessary when the parties freely chose to adopt the rules of that institution. If the institution's agreement were delayed, the arbitration process would be adversely affected.

7. **Mr. OLIVENCIA** (Spain), observing that it would have been better for the proposal to be submitted in writing, proposed that the words "without modification" should be deleted from the reference to the UNCITRAL Arbitration Rules, since the Rules themselves stated that they could be used with amendments agreed by the parties.

8. On the point raised by the observer for Morocco, he said that for a full conversion to administered arbitration the agreement of the arbitration institution would be needed, but if the parties simply referred to the rules of an institution that would not be necessary. Mere reference to such rules would not convert the arbitration into an administered arbitration.

(Mr. Olivencia, Spain)

9. His delegation was not in entire agreement with the proposed new wording, but in any case the Notes were practical suggestions and were not binding. They must, however, be quite clear and not result in any misunderstanding for the parties.

10. **Ms. ZHANG Yuejiao** (China) thought that the new text would affect the freedom of parties to sign an agreement. She agreed that the UNCITRAL Arbitration Rules allowed parties discretion in selecting their arbitral procedure. Since the UNCITRAL Rules applied to international arbitration, and the Notes applied to both international and domestic arbitration, it should be made clear that the parties to international arbitration could choose the UNCITRAL Rules. Parties were not obliged to choose the rules of an arbitration institution or the UNCITRAL Rules, but could also adopt ad hoc rules. She therefore considered that the second part of the proposed new wording could be simplified and amended to read: "Without prior decision on the procedural rules, undue delay in the procedure might result."

11. **Mr. HOLTZMANN** (United States of America) suggested that the words "without modification" might be changed to "with or without modifications" to take account of the objections raised.

12. Replying to the question from the observer for Morocco as to the need for agreement by an arbitration institution, he explained that the rules of such institutions generally provided for a function to be performed by the institution, which might be unwilling to perform that function in a case that had already begun unless it was paid a fee. Hence it might require an agreement. The proposed wording was designed to alert parties to that possibility.

13. **Mr. CHOUKRI SBAI** (Observer for Morocco) said that in view of that explanation he could support the joint proposal. He endorsed the Spanish proposal to delete the words "without modification".

14. **Mr. ABASCAL ZAMORA** (Mexico) also endorsed the joint proposal, subject to minor drafting changes by the Secretariat, and the Spanish proposal to delete the words "without modification".

15. **The CHAIRMAN** suggested that the joint proposal be accepted with the deletion of the words "without modification" and subject to minor drafting changes by the Secretariat. A final version of the text would be submitted to the Commission at its next annual session.

16. *It was so agreed.*

The discussion covered in the summary record ended at 10.20 a.m.